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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

7 DEIDRA C.,

8 Plaintiff,

9 v.

10 COMMISSIONER OF SOCIAL SECURITY,

11 Defendant.
12

CASE NO. 2:19-cv-01042-BAT

**ORDER REVERSING THE
COMMISSIONER AND REMANDING
FOR FURTHER PROCEEDINGS**

13 Plaintiff appeals the ALJ's decision finding her not disabled. She contends the ALJ
14 misevaluated the opinions of Christopher Dunn, Ph.D., Christine Youdelis-Flores, M.D.,
15 Margaret Green, M.D., and Holly Petaja, Ph.D, Dkt 10, and the Court should reverse and remand
16 the case for further proceedings. *Id.* at 14. For the reasons below, the Court **REVERSES** the
17 Commissioner's final decision and **REMANDS** the matter for further administrative proceedings
18 under sentence four of 42 U.S.C. § 405(g).

19 In assessing the medical opinion evidence, the ALJ first noted treating psychologist
20 Christopher Dunn, Ph.D. opined plaintiff is moderately to markedly limited in the ability to
21 perform basic work activities and markedly limited in her ability to maintain attention,
22 concentration. Tr. 21. The ALJ rejected these opinions first finding the opinions are inconsistent
23 with the doctor's statement "overall she is doing well." *Id.* The ALJ cannot rely on indications

1 such as a claimant is ““doing well because doing well for purposes of a treatment program has no
2 necessary relation to a claimant’s ability to work or to her work-related functional capacity.””
3 *Garrison v. Colvin*, 759 F.3d 995, 1018 (9th Cir. 2014) Citing *Hutsell v. Massanari*, 259 F.3d at
4 707, 712 (8th Circuit 2001).

5 The ALJ also rejected the doctor’s opinion as inconsistent with the “fact, in attending
6 school successfully, she was demonstrating the ability to travel to new places and concentrate.”
7 Tr. 21. Substantial evidence does not support the finding. Plaintiff testified she attended school
8 for only two hours, Tr. 36; by 11:30 am each day she is tired and “not connecting” with the
9 school or herself, Tr. 45; she is “barely passing or failing” her classes, Tr. 37; and she has been
10 inquiring about accommodations because she is “struggling on tests” and “the comprehension
11 part of the classes.” *Id.* The Court accordingly concludes the ALJ erred in rejecting Dr. Dunn’s
12 opinions.

13 The ALJ next reviewed Margaret Green’s, M.D. April 2018 letter supporting disability
14 due to mental health disease and opining plaintiff ““has made significant improvements due to
15 tremendous effort on her part but I do not think she could handle the stress of employment.”” Tr.
16 21. The ALJ noted Dr. Green treated plaintiff for HIV and rejected the doctor’s opinion because
17 Dr. Green is not “one of claimant’s mental health treatment providers,” and because the
18 longitudinal treatment and activities of daily living including successful schooling fail to support
19 this opinion.” Tr. 22.

20 The ALJ erred. Dr. Green is a medical doctor who treated plaintiff. The doctor’s opinion
21 cannot be rejected because she is not a mental health specialist, i.e. one of plaintiff’s mental
22 health providers. *See, e.g., Lester v. Chater*, 81 F.3d 821, 833 (9th Cir. 1996) (A treating
23 physician’s opinion constitutes “competent psychiatric evidence” and may not be discredited on

1 the ground that she is not a board-certified psychiatrist.). Here when plaintiff saw Dr. Green, the
2 doctor was presented with numerous diagnoses including “Bipolar 2 Disorder.” Tr. 578. While
3 Dr. Green’s treatment focuses on plaintiff’s HIV, it is clear the doctor knew about plaintiff’s
4 mental health problems and in fact referred plaintiff for further psychiatric evaluation and
5 treatment. Tr. 984.

6 The ALJ also rejected Dr. Green’s opinion as inconsistent with the longitudinal treatment
7 record. The ALJ did not specify how or why the treatment record contradicts the doctor’s
8 opinion. The ALJ’s rationale is thus an invalid conclusory assertion. Additionally, the ALJ’s
9 recitation of the plaintiff’s treatment record indicates plaintiff has suffered from mental health
10 problems, that her symptoms wax and wane, and that she is still in treatment and receiving
11 medications. Substantial evidence thus does not support the ALJ’s finding that the treatment
12 record contradicts Dr. Green’s opinions.

13 And lastly the ALJ rejected Dr. Green’s opinions as inconsistent with activities of daily
14 living, noting her “successful schooling.” Substantial evidence does not support the findings.
15 Plaintiff lives in a clean and sober house, states she spends most of her time in her room, goes to
16 medical appointments and can shop for herself. These minimal activities do not contradict Dr.
17 Green’s opinion plaintiff has significant anxiety., occasional depressive symptoms and episodic
18 debilitating headaches. Additionally, as noted above, plaintiff attends school for two hours a day,
19 states she cannot maintain concentration after that time period, and is barely passing or failing
20 her classes. Plaintiff’s school activities do no undermine Dr. Green’s activities.

21 The ALJ also rejected the opinions of treating doctor Christine Youdelis-Flores, M.D. Dr.
22 Youdelis-Flores opined plaintiff was not ready for work and would likely deteriorate if faced
23 with the demands and stress of work. Tr. 22. The ALJ rejected the doctor’s opinion as

1 inconsistent with the minimal information about the claimant's functioning, plaintiff did not
2 require "inpatient psychiatric treatment," and plaintiff showed greater therapeutic success and
3 improvement. The Court rejects the ALJ's rationale. First the statement the doctor's opinion is
4 "inconsistent with the minimal information about the claimant's functioning" makes no sense. It
5 suggests one does not know what claimant's functioning is because there is not enough
6 information to assess her functioning. If this is the case the ALJ was required to develop the
7 record, not reject the doctor's opinion. Second, that plaintiff has not been placed into an inpatient
8 psychiatric treatment facility does not mean she does not have serious mental health problems
9 affecting her ability to work. Otherwise only claimants who receive inpatient treatment would be
10 deemed to have serious mental health limitations. And third the ALJ found plaintiff has enjoyed
11 "therapeutic success" citing to Dr. Dunn's note "She is doing well." Tr. 22 (citing Ex. 8F, p. 7).
12 As noted above this is not a valid basis to reject a medical opinion.

13 The finally, the ALJ rejected the two opinions Holly Petaja, Ph.D. rendered. After
14 examining plaintiff in 2016, Dr. Petaja opined plaintiff is markedly limited in her ability to
15 understand, persist, remember in tasks following detailed instruction, perform within a schedule,
16 maintain regular attendance and be punctual, adapt to changes in the workplace, communicate
17 effectively and complete a normal work day or week. Tr. 22. The ALJ gave some the opinion
18 some weight based upon Dr. Petaja's conclusion plaintiff is moderately limited overall but
19 rejected the doctor's opinions about plaintiff's marked limitations "in light of claimant's success
20 at drug cessation and success in school." *Id.*

21 The ALJ did not explain how or why plaintiff's success at drug cessation is grounds to
22 reject Dr. Petaja's opinions. The doctor was aware of plaintiff's past drug use and that plaintiff
23 was living in a "recovery house." Tr. 535. Dr. Petaja also found plaintiff's impairments were not

1 the primary result of drug use within the past 60 days. Tr. 537. Additionally, as discussed above,
2 the ALJ erred in relying on plaintiff's school performance to reject other medical opinions. The
3 ALJ likewise erred in relying on school performance to reject Dr. Petaja's opinions.

4 The ALJ also noted Dr. Petaja again examined plaintiff in May 2017 and found plaintiff
5 is severely limited in her ability to understand, persist, remember in tasks following detailed
6 instruction, perform within a schedule, maintain regular attendance, complete a normal work day
7 or week, and is thus markedly limited in her ability to work overall. Tr. 22. The ALJ rejected the
8 opinion on the grounds the record showed plaintiff has improved overtime because she "was
9 maintaining sobriety, attending school and treating with a psychologist." *Id.*

10 Substantial evidence does not support the finding. Plaintiff's schooling shows struggle,
11 not success. Plaintiff's sobriety has not diminished limitations caused by her mental health
12 conditions. As noted above, Dr. Dunn opined in 2018 plaintiff had marked and moderate
13 limitations. Dr. Green opined in 2018 that despite improvements, plaintiff could not handle the
14 stress of employment. Dr. Youdelis-Flores also opined in 2018 plaintiff was not ready for work
15 and would likely deteriorate with the demands and stress of work. Dr. Petaja's 2017 opinion is
16 not inconsistent with the opinions of the treating and other examining doctors. The ALJ thus
17 erred in concluding plaintiff was showing improvement that was inconsistent with Dr. Petaja's
18 opinion.

19 For the foregoing reasons, the Commissioner's final decision is **REVERSED** and this
20 case is **REMANDED** for further administrative proceedings under sentence four of 42 U.S.C. §
21 405(g).

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1 On remand, the ALJ shall reassess the opinions of Christopher Dunn, Ph.D., Christine
2 Youdelis-Flores, M.D., Margaret Green, M.D., and Holly Petaja, Ph.D.; develop the record and
3 redetermine plaintiff's RFC as needed and proceed to the remaining steps as appropriate.

4 DATED this 24th day of February, 2020.

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7 BRIAN A. TSUCHIDA
Chief United States Magistrate Judge